

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 KEVIN SO,) Case No. CV 08-03336 DDP (AGRx)
12 Plaintiff,)
13 v.) **ORDER GRANTING PLAINTIFF'S EX
14 LAND BASE, LLC; UNIVEST PARTE APPLICATION AND DENYING
15 FINANCIAL SERVICES, INC.; PLAINTIFF'S MOTION FOR PROTECTIVE
16 BORIS LOPATIN, individually) ORDER
and d/b/a BORIS LOPATIN) [Plaintiff's *Ex Parte* Application
17 ASSOCIATES and CHARLES W.) filed on July 13, 2009;
WOODHEAD,) Defendant's Motion filed on July
18 Defendants.) 15, 2009]
19)
20)**

20 This matter comes before the Court on two motions filed by the
21 parties related to the jurisdictional discovery ordered by the
22 Court in its April 22, 2009 Order. Plaintiff Kevin So has filed an
23 *ex parte* application for an order extending the time to take
24 jurisdictional discovery for Defendant Mira Meltzer. Defendant
25 Meltzer, appearing *pro se*, has moved for a Protective Order as to
26 Plaintiff's discovery. Because the two motions present overlapping
27 issues, the Court addresses them together in this Motion. After
28 reviewing the materials submitted by the parties, the Court grants

1 Plaintiff's *ex parte* application, extends the deadline to take
2 jurisdictional discovery an additional sixty days from the date of
3 this order, and denies Defendant's Motion for a Protective Order.

4 **I. BACKGROUND**

5 In this fraud case, Plaintiff Kevin So ("So") sues a number of
6 individual and business entity defendants for, *inter alia*,
7 fraud/intentional misrepresentation, negligent misrepresentation,
8 fraud based on concealment of material facts, conversion, unjust
9 enrichment, civil conspiracy, breach of contract, and breach of
10 fiduciary duty against various defendants. At the time the Court
11 heard Defendant Meltzer's Motion to Dismiss for Lack of Personal
12 Jurisdiction, there was limited information about Meltzer's
13 contacts with California. The First Amended Complaint ("FAC") and
14 the Second Amended Complaint ("SAC") allege that Meltzer is a
15 resident and citizen of Virginia. FAC at ¶ 15; SAC ¶ 16. The FAC
16 alleged that Meltzer "attended one or more . . . meetings in
17 California" at which "the scheme was furthered." FAC at ¶ 16.
18 According to the transcript of defendant Charles Woodhead's
19 deposition, Meltzer attended a meeting at his house in about 2006.
20 Woodhead Depo. at 278-79. The FAC also alleged that Meltzer
21 received funds from the project, was a business associate of Kondas
22 and Millar's, and assisted Suchanek when he represented So in the
23 England litigation.

24 After laying out the standard for personal jurisdiction, on
25 the basis of the limited allegations and evidence before the Court,
26 the Court ordered jurisdictional discovery. Specifically, the
27 Court's Order provided: "So has 90 days from the date of this Order
28 to conduct jurisdictional discovery as to Kondas and Meltzer."

1 April 22, 2009 Order at 7 (Dkt. No. 148). That ninety-day deadline
 2 expired on July 21, 2009.

3 On June 6, 2009, Plaintiff served Meltzer with Requests for
 4 Production of Documents and noticed Meltzer's deposition for July
 5 13, 2009, to be taken (with the consent of counsel) in Washington,
 6 D.C. The First Set of Requests consisted of 37 requests for
 7 documents. Kalbian Decl., Ex. A at 7-12. After Plaintiff was
 8 contacted by an attorney who would represent Meltzer at her
 9 deposition, Brian Shaughnessy, Plaintiff's counsel agreed to
 10 reschedule the deposition for July 17, 2009. Meltzer delivered her
 11 responses to the Requests for Documents on July 8, 2009, which
 12 included one single-paged document, and which was signed by
 13 Shaughnessy.¹ After Plaintiff attempted to confer with Defendant,
 14 Plaintiff filed this *ex parte* application. The *ex parte*
 15 application seeks an order extended the Court's July 21, 2009
 16 discovery deadline or, in the alternative, to compel production.

17 Meanwhile, Meltzer filed a Motion for a Protective Order in
 18 light of her noticed deposition. Meltzer argues that Plaintiff's
 19 requests seek discovery beyond the limited personal jurisdiction
 20 issues that were the subject of the Court's April 22, 2009 Order.
 21 Meltzer also objects to the potential scope of the deposition;
 22 according to Meltzer, the notices of deposition were not expressly
 23 limited to jurisdictional issues.

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25 ¹It is not clear whether Meltzer has retained counsel, at
 26 least for limited discovery purposes. No attorney has entered an
 27 appearance on behalf of Meltzer in this case. Additionally, in her
 Motion for a Protective Order, Meltzer cites the potential
 prejudice she will suffer as a pro se Defendant. See Def.'s Mot.
 28 at 4. However, Meltzer appears to be represented in discovery by
 an attorney. See Kalbian Decl., Ex. B at 20.

1 **II. EX PARTE APPLICATION**

2 The Court grants Plaintiff's *ex parte* application to continue
 3 the jurisdictional discovery deadline. Aside from opposing his
 4 motion on the ground that it is a "cross-motion" to her Motion for
 5 a Protective Order, Meltzer has provided the Court with no reason
 6 why the Court should not grant Plaintiff's request. An additional
 7 sixty days will give the parties the opportunity to schedule
 8 Meltzer's deposition, and the opportunity for Plaintiff to move to
 9 compel responses, meet and confer about discovery disputes, or
 10 narrow his requests. Meltzer's unilateral cancellation of her
 11 deposition did not provide sufficient time for the parties to
 12 reschedule it. Accordingly, the Court grants Plaintiff an
 13 additional sixty days to conduct jurisdictional discovery as to
 14 Meltzer.²

15 **III. PROTECTIVE ORDER**

16 Defendant has filed a Motion for a Protective Order Pursuant
 17 to Federal Rule of Civil Procedure 26(c).³

18 **A. Legal Standard**

19 Pursuant to Federal Rule of Civil Procedure 26(c), a court may
 20 grant a request for an protective order "for good cause" in order
 21 to "protect a party or person from annoyance, embarrassment,

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 23 ²Although the Court grants Plaintiff's application, the Court
 24 notes that Plaintiff previously waited until roughly forty-five
 25 (45) days into the ninety-day jurisdictional discovery period - or
 26 halfway through - to serve his First Request for Documents. The
 27 Court expects that Plaintiff will proceed diligently.

28 ³ The Court notes that discovery issues - including those
 29 regarding protective orders - are in the purview of the Magistrate
 30 Judge. For the sake of judicial economy, the Court resolves
 31 Defendant's Motion in this case. Future discovery motions,
 32 however, should be brought before Magistrate Judge Rosenberg.

1 oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1).
2 Among the potential 26(c) orders are an order "forbidding inquiry
3 into certain matters, or limiting the scope of disclosure or
4 discovery to certain matters." Id. at 26(c)(1)(D). A party
5 seeking a protective order under Rule 26(c) must include in the
6 motion "a certificate that the movant has in good faith conferred
7 or attempted to confer with other affected parties in an effort to
8 resolve the dispute without court action." Id. at 26(c)(1). "For
9 good cause to exist, the party seeking protection bears the burden
10 of showing specific prejudice or harm will result if no protective
11 order is granted." Phillips ex rel. Estates of Byrd v. General
12 Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002). Whether the
13 information being sought is for a legitimate purpose or will
14 violate a privacy interest are relevant to the "good cause"
15 analysis. Schwarzer, Tashima & Flagstaffe, Federal Civil Procedure
16 Before Trial ¶ 11:1072. Even if there is good cause, a court must
17 then balance the interest in allowing discovery against the
18 relevant burdens on the parties. Id. ¶ 11:1074; Phillips, 307 F.3d
19 at 1211.

20 **B. Discussion**

21 As an initial matter, the Court finds Defendant's Motion
22 procedurally deficient. Rule 26(c)(1) includes a plain requirement
23 that Defendant's Motion include a "certification that the movant
24 has in good faith conferred or attempted to confer with other
25 affected parties in an effort to resolve the dispute without court
26 action." Fed. R. Civ. P. 26(c)(1). Additionally, Central District
27 of California Local Rules 37-1 and 37-2 require a pre-filing
28 conference of counsel "[p]rior to the filing of any motion relating

1 to discovery pursuant to F.R.Civ.P. 26-37" and a joint stipulation.
2 C.D. Cal. L.R. 37-1, 37-2.1. Local Rule 37-2.4 expressly provides
3 that the Court "will not consider any discovery motion in the
4 absence of a joint stipulation or a declaration from counsel for
5 the moving party" that establishes that opposing counsel did not
6 cooperate. C.D. Cal. L.R. 37-2.4. There is no indication in the
7 papers that Defendant has attempted to comply with either
8 requirement. Rather, the only indication is to the contrary. See
9 Opp'n at 6-7. Accordingly, the Court denies Plaintiff's Motion for
10 a Protective Order.

11 **IV. CONCLUSION**

12 For the foregoing reasons, the Court grants Plaintiff's *ex*
13 *parte* application, orders that the period for jurisdictional
14 discovery as to Meltzer shall conclude sixty days from the date of
15 this Order, and denies Defendant's Motion for a Protective Order.
16 IT IS SO ORDERED.

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19 Dated: August 4, 2009



DEAN D. PREGERSON
United States District Judge

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